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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,433	12/30/2003	Michael R. Clark	31419.23990	1979
26781	7590	09/04/2007		
BROUSE MCDOWELL LPA			EXAMINER	
388 SOUTH MAIN STREET				LUONG, VINH
SUITE 500			ART UNIT	PAPER NUMBER
AKRON, OH 44311				3682
			MAIL DATE	DELIVERY MODE
			09/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,433	CLARK ET AL.	
	Examiner	Art Unit	
	Vinh T. Luong	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 August 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 18,20 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 18,20 and 23-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 March 2007 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Vinh T. Luong
Primary Examiner

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input checked="" type="checkbox"/> Other: <u>Attachment</u>

Art Unit: 3682

1. The amendment after final filed on August 24, 2007 has been entered.
2. The final rejection on May 9, 2007 is withdrawn and replaced by the instant final rejection.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 18, 20, and 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation “said first weight and said second weight being oppositely disposed and substantially equidistant from said transverse axis” appears twice in Claim 18. It is unclear whether the instant recitation refers to the same or different things. See double inclusion in MPEP 2173.05(o).

5. Claims 18, 20, and 23-25, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (US Patent No. 5,372,560) in view of Loppnow (US Patent No. 4,809,563).

Regarding Claim 18, Chang teaches, in FIGS. 57-63, a reversible foot pedal 86 (id. col. 17, line 56+) comprising:

a pedal body 861, 862 having a first surface (see FIGS. 61-63 in Attachment hereinafter “Att.”) and a second surface (Att.) oppositely disposed from said first surface (Att.); and, said pedal body 861, 862 having a longitudinal axis (FIG. 60 in Att.) and a transverse axis (Att.), said transverse axis (Att.) being perpendicular to said longitudinal axis (Att.), said pedal body 861, 862 further comprising a first weight 864 (FIG. 60 in Att.) and a second weight

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864 (Att.) operatively connected to said pedal body 861, 862, such that one of said surfaces (FIGS. 61-63 in Att.) faces substantially upwards as said pedal body 861, 862 approaches an equilibrium position, said first weight 864 (Att.) and said second weight 864 (Att.) being oppositely disposed and substantially equidistant from said transverse axis (Att.), said pedal body 861, 862 further comprising a third weight 864 (FIG. 60 in Att.) and a fourth weight 864 (FIG. 60 in Att.) operatively connected to said pedal body 861, 862, said third weight 864 (Att.) and said fourth weight 864 (Att.) being oppositely disposed and substantially equidistant from said transverse axis (Att.).

As noted, Chang's elements 864 must have an amount or quantity of heaviness, i.e., mass or weight. Therefore, the elements 864 "read on" the claimed weight. In summary, Chang teaches the invention as claimed except the securing means.

Loppnow teaches securing means 26 operatively connected to the pedal body 12, the securing means 26 adapted to limit movement of an associated foot relative to said pedal body 12, wherein said securing means 26 is adapted to rotate about the pedal body 12 such that an operator can position an associated foot on either the first surface or the second surface to utilize the securing means 26 without removing the securing means 26 from the pedal body 12 as seen in FIGS. 9-12.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the securing means to the pedal body of Chang so that the operator can position the associated foot on either Chang's first or second surface to utilize the securing means without removing the securing means from Chang's pedal body as taught or suggested by Loppnow. The results of the combination are predictable. See *KSR International*

Co. v. Teleflex Inc., 82 USPQ2d 1385 (2007); *Ex parte Smith*, 83 USPQ2d 1509 (BPAI 2007); *Ex parte Catan*, 83 USPQ2d 1569 (BPAI 2007); and *Ex parte Kubin*, 83 USPQ2d 1410 (BPAI 2007).

Regarding Claim 20, Chang's first surface (Att.) is adapted to contact an associated foot and Chang's second surface (Att.) is adapted to contact an associated shoe. It has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).

Regarding Claim 23, Chang's third and fourth weights 864 are disposed linearly to Chang's first and second weights.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange Chang's third and fourth weights such that Chang's third and fourth weights are disposed longitudinally outward of Chang's first and second weights. To rearrange Chang's weights would have been an obvious choice in design since the results of the change would have been predictable. See legal precedents regarding rearrangement of parts in MPEP 2144.04 and *KSR International Co. v. Teleflex Inc., supra*.

Regarding Claim 24, Chang's first, second, third and fourth weights 864 (FIG. 60 in Att.) inherently have diameters. However, the diameters of Chang's third and fourth weights are equal to the diameters of Chang's first and second weights.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the size/dimension of the diameters of Chang's third and fourth weights such that the diameters of Chang's third and fourth weights are larger than the ones of

Chang's first and second weights. To change the size/dimension of the diameters of the weights would have been an obvious choice in design since the results of the change would have been predictable. See legal precedents regarding change in size/proportion in MPEP 2144.04 and *KSR International Co. v. Teleflex Inc., supra*.

Regarding Claim 25, Chang's third and fourth weights 864, each inherently have a length L1, and Chang's first and second weights 864 each inherently have a length L2.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the size/dimension of the lengths of Chang's third and fourth weights such that the lengths of Chang's third and fourth weights are less than the ones of Chang's first and second weights. To change the size/dimension of the diameters of the lengths of the weights would have been an obvious choice in design since the results of the change would have been predictable. See legal precedents regarding change in size/proportion in MPEP 2144.04 and *KSR International Co. v. Teleflex Inc., supra*.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Jackson (weights 54 and 46 in FIGS. 11 and 12) and Phillips (FIG. 14).

7. Applicant's arguments filed August 24, 2007 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 18, 20, and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

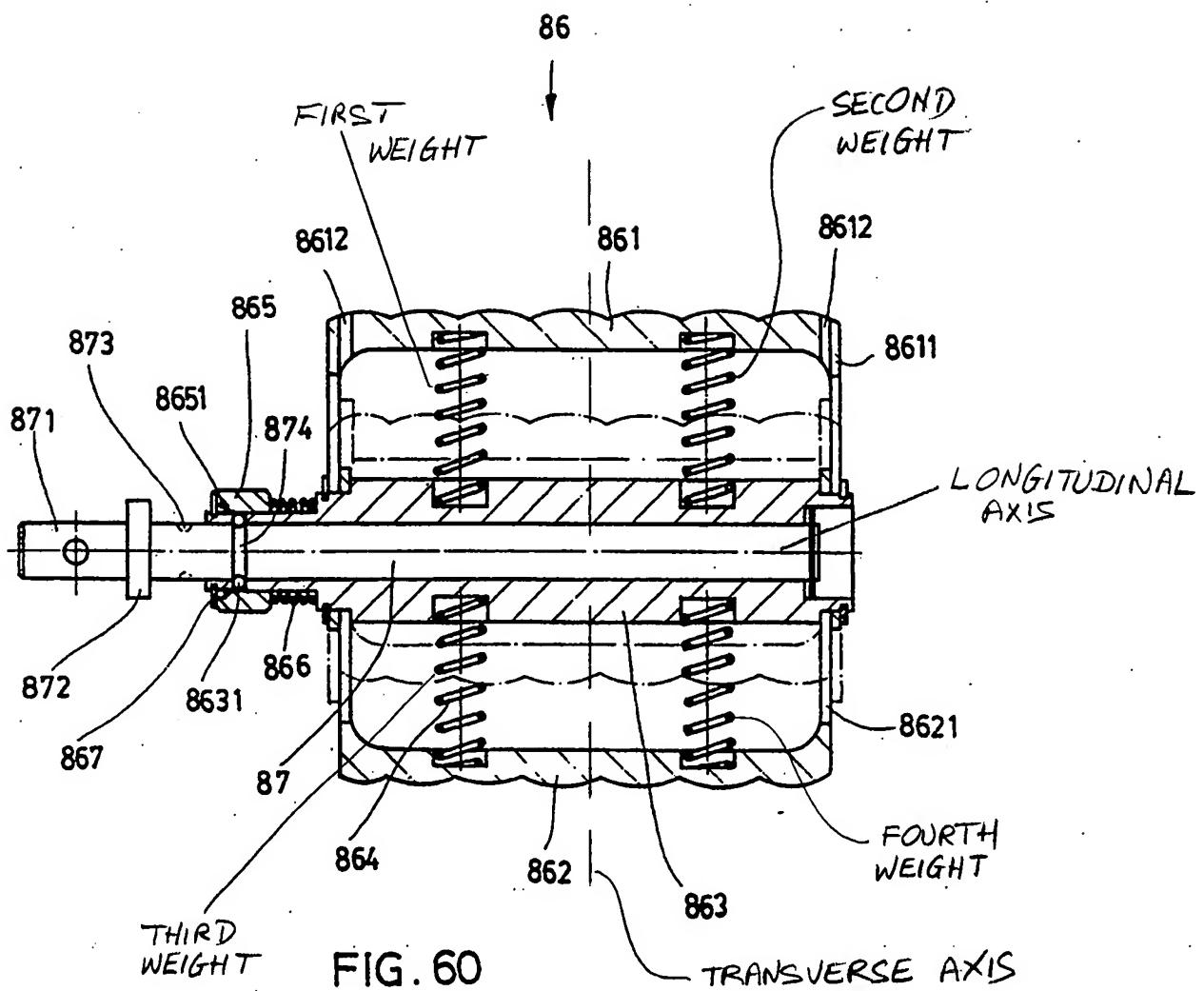
Luong

August 30, 2007



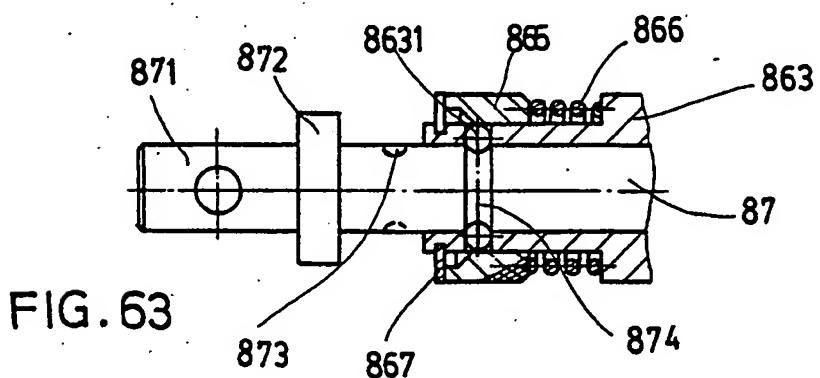
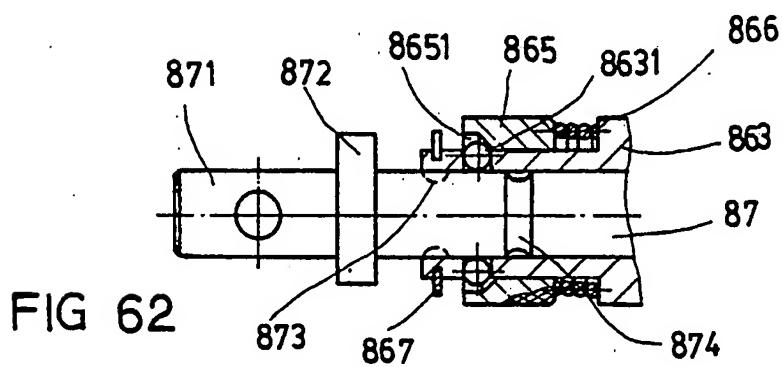
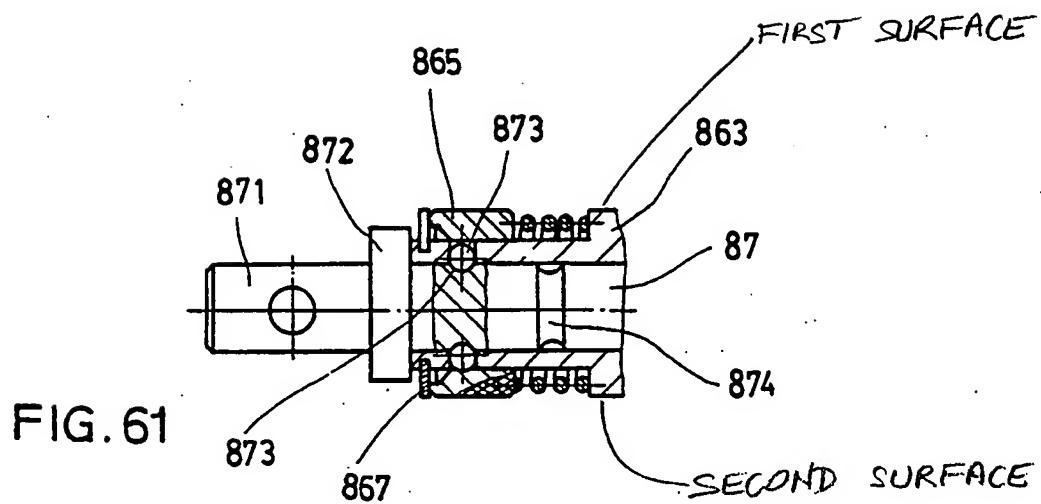
Vinh T. Luong
Primary Examiner

ATTACHMENT



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